

OFFER TO PURCHASE

THE UNDERSIGNED, The City of Galena, Illinois, a municipal corporation, hereinafter referred to as "Buyer," hereby offers and agrees to purchase from The Burlington Northern and Santa Fe Railway (formerly Chicago, Burlington & Quincy Railroad Company), hereinafter referred to as "Seller," the real property commonly known as Galena Junction to Galena, Illinois branch line right-of-way, a more specific description is attached hereto as Exhibit "A", fully incorporated herein by this reference.

PURCHASE PRICE: The purchase price is Seventy Thousand Seven Hundred Twenty-Five and 00/100 Dollars (\$70,725.00), subject to the existing zoning and use restrictions and easements of record and the contingencies set forth herein, upon the following conditions:

CONSUMMATION OF SALE: The sale shall be consummated by payment of One Thousand and 00/100 and Dollars (\$1,000.00) along with this contract as a security deposit. The remaining sum of Sixty-Nine Thousand Seven Hundred Twenty-Five and 00/100 Dollars (\$69,725.00) shall be paid to Seller at closing.

CLOSING: Closing shall be on or before March 29, 2002, or on the date, if any, to which such date is extended by reason of problems which have arisen with regard to the status of the title of the premises described herein, provided title has been shown to be good or is accepted "as is" by Buyer. Unless subsequently mutually agreed otherwise, the closing shall take place at the office of Hammer, Simon & Jensen, 303 N. Bench Street, Galena, Illinois.

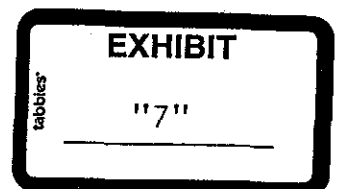
POSSESSION: Possession shall be given to Buyer immediately following closing.

SURVEY: Seller shall not be required to furnish a survey to the Buyer or to have the property staked so as to show the perimeter boundary locations.

CLOSING INSPECTION & CONDITION: At a pre-arranged reasonable time after acceptance of this Offer, Buyer shall have the right to inspect the premises so as to evaluate whether or not there are any environmental concerns. Buyer and Seller shall determine a mutually agreeable time to conduct such inspection.

ADDITIONAL CONDITIONS:

- (a) The amount specified as the purchase price or the certified fair market value is supported by the accompanying appraisal conducted by Hertz Appraisal Services, 103 South Center Street, Geneseo, Illinois 61254, dated November 1, 2001.
- (b) The purpose of the acquisition is for a recreational trail for biking, hiking, walking, jogging and cross-country skiing.



- (c) Further inquiry regarding this Offer, on behalf of the City, should be directed to Mr. Richard Auman, Mayor, City of Galena, 312½ North Main Street, Galena, Illinois 61036.
- (d) Accompanying this Offer and made an integral part is a statement of just compensation which is attached to this Offer to Purchase.
- (e) The deed conveyed must contain a use restriction and covenant that reads as follows:

“The real property described herein must be maintained for public outdoor recreation use purposes only as prescribed by the State of Illinois, Department of Natural Resources, under terms of the State’s bike path (BP Grant Program) and shall not be sold or exchanged or have other encumbrances placed on the title, in whole or in part, which divests control or interest in the property to another party without prior approval from the State of Illinois, Department of Natural Resources or its successor.”

COMPLIANCE: Seller and Buyer agree to provide all information necessary to complete and execute all documents and perform all actions necessary to comply with the following:

- (a) Real Estate Settlement Procedures Act of 1974.
- (b) Any and all Internal Revenue forms applicable.
- (c) A mutually agreeable summary of the closing transaction.
- (d) All laws, statutes, ordinances, rules and regulations applicable to this transaction.

SELLER REPRESENTATIONS: Seller represents to Buyer as of the date of Seller’s execution of this Offer to Purchase as follows:

- (a) There are no underground storage tanks on the premises.
- (b) The premises are not contaminated with any hazardous substances.

STATUS OF TITLE: Title to the real estate when conveyed may be subject only to the following:

- (a) Plat restrictions.
- (b) Perimeter public utility easements which do not underlie the existing improvements.

- (c) Restrictions and covenants of record, provided they are not violated by the existing improvements or the present use thereof and provided further that they do not contain a reverter or right of re-entry.
- (d) Special assessments and taxes for improvements not yet completed.
- (e) Seller shall deliver a recordable Warranty Deed (or Trustee's or Executor's Deed, if applicable) sufficient to convey the real estate to Buyers, in fee simple, subject only to exceptions permitted herein, at the closing of this transaction upon Buyers' compliance with the terms of this Contract. If personal property is to be conveyed as a part of this transaction, Seller shall also deliver a warranty Bill of Sale. Seller shall also provide at their expense the state and county transfer tax declarations and any other transfer tax declaration, zoning certificate, or exemption that may be necessary for recording.

PRORATIONS: General real estate taxes (based upon tax assessor's latest evaluation and latest known tax rate), water, taxes, and proratable items shall be prorated to the date of closing. All prorations are final unless otherwise provided herein.

EVIDENCE OF TITLE: Buyer, at their own expense, shall prepare and pay for the following documents to evidence the condition of the Seller's title:

- (a) A commitment for title insurance for the real estate issued by a title insurance company licensed to do business in the State of Illinois, bearing date on or subsequent to the date hereof, in the amount of the purchase price and showing title in the intended grantor, subject only to the general exceptions set forth above and exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing. Such title commitment shall be conclusive evidence of merchantable title, except for matters not covered or insured thereby.
- (b) Such other documents as are reasonably required for the issuance of a Title Insurance Policy.

If the evidence of title discloses unpermitted exceptions, Seller shall have 30 days from the date of delivery thereof to have the exceptions removed from the commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions, and, in such event, the time of closing shall be 35 days after delivery of the commitment or the title specified in Paragraph CLOSING. If Seller fails to have the exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, Buyer may terminate this contract or may elect upon notice to Seller within ten days after the expiration of the 30 day period, to take title as it then is with the right to deduct from the purchase price lien or encumbrances of a definite or ascertainable amount. If Buyer does not so elect, this contract shall become null and void without further actions of the parties.

REAL ESTATE COMMISSION: Seller and Buyer warrant that neither has engaged the services of a real estate broker and no commission is due and owing.

DEFAULT: If the Buyer defaults, all earnest money shall be forfeited and applied pursuant to the terms of the listing agreement, if any, and to the payment of any expenses incurred by Seller or his agents; and because of the difficulty of ascertaining the exact amount of actual damages sustained by Seller, it is agreed that Buyer shall relinquish any and all monies deposited by them under this contract. Such monies shall be deemed to represent damages sustained, provided, however, that this provision with the respect to liquidated damages shall not be the exclusive remedy of Seller, and Seller shall retain all monies deposited without prejudice to his other remedies. If Seller defaults, the earnest money, at the option of the Buyer, shall be refunded to Buyer, but such refunding shall not release Seller from his obligations under this Contract nor foreclose the right of Buyer to pursue other legal remedies.

SURVIVAL OF CONTRACT TERMS: All agreements, representations and warranties made herein shall be deemed to be remade at the closing and shall survive the closing.

TIME: Time is of the essence of this Contract.

NOTICES: All notices herein required shall be in writing and shall be served, unless otherwise provided, on the parties or their respective attorneys, if any, personally or by certified or registered mail (return receipt requested). Notice shall be deemed given on the date of actual receipt.


BINDING ON SUCCESSORS OR ASSIGNS: The covenants herein shall be binding on the executors, administrators, successors, and assigns of the respective parties to this Offer to Purchase.

This Offer by the Buyer shall remain open until February 22, 2002 at 4:30 p.m. at which time it shall be revoked unless accepted by Seller.

DATED this 14th day of Feb., 2002.

BUYER:

CITY OF GALENA, ILLINOIS

BY: 
Richard D. Auman, Mayor


JoAnn Turner, City Clerk

ACCEPTANCE OF OFFER

The foregoing Offer is hereby accepted and the Seller agrees to sell the premises upon the terms stated. By execution of this Agreement, the Seller acknowledges a receipt of a copy of this Agreement.

DATED this _____ day of _____, 2002.

SELLER:

**BURLINGTON NORTHERN and
SANTA FE RAILWAY**

BY: _____

**STATEMENT OF JUST COMPENSATION
SUMMARY OF PROPERTY ACQUISITION AND OFFER TO PURCHASE**

Project: BP 00-260

County: Jo Daviess
Parcel # 43-06-000-314-00
43-06-000-308-00
43-06-500-010-00
43-06-000-303-00

OWNER(S) OF REAL PROPERTY: The Burlington Northern and Santa Fe Railway Company "BNSF"

LOCATION OF PROPERTY: From City of Galena to Galena Junction and
Lots 4,5,6,7 and 3 Block 2 and Lots 1 thru 12, Block 1

In compliance with Sec. 301 of the federal Relocation Assistance & Real Property Acquisition Policies Act (P.L. 91-646, 49 CFR 24) and/or the Illinois Displaced Persons Relocation Act (310 ILCS 40 et seq.), the following summary has been prepared to fully inform you, the seller, of the details of the acquisition of (a portion of) your property for a recreational trail (bike, hiking
purposes. The legal description of the parcel to be acquired is attached hereto: walking, jogging and cross
country skiing).

1. Existing Property:

Total Size/Area: 61.5 acres (acres/sq. ft.) more or less
Highest and Best Use as appraised: Recreational
Fair Market Value of Entire Property* \$ 70,725

*Fair Market Value of Entire Property is based upon a State-approved appraisal and is not less than the appraiser's opinion of fair market value which was determined after a personal inspection of your property, at which time you or your representative were given the opportunity to accompany the appraiser. The appraisal takes into consideration the location of your property, its highest and best use, current land sales of properties similar to your property and other indicators of values as may be necessary, (i.e., _____).

2. Land to be Acquired: Fee simple interest in a
Estate or Interest to be acquired: railroad bed owned by "BNSF"
Total Land Areas to be acquired: 61.5 acres (acres/sq. ft.)

3. Major Improvements and All Fixtures to be acquired: There are no major improvements or
fixtures on the premises. The property does have several culverts in
need of repair.

4. Compensation for Property Acquired (61.5 acres acres/sq.ft.):
Fair Market Value, including all improvements, as part of the Whole Property: \$ 70,725
Damage to the remaining property as a result of the acquisition: \$ N/A
Total compensation for the property acquired: \$ 70,725
*(See attached Appraisal Report prepared by Hertz Appraisal Services)

5. Other Consideration:
(N/A) \$ N/A
(N/A) \$ N/A
Total Other Consideration: \$ N/A

6. Total Just Compensation for Entire Acquisition: \$ 70,725
(includes all interests in the land required for the proposed public project, and damage to the remaining property, if any)

Any increase or decrease in the market valuation caused by the public improvement or project for which property is to be acquired, or by the likelihood that the property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded in making the determination of just compensation.

Statement of Just Compensation & Offer to Purchase

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Project: BP 00-260
Parcel #: 43-06-000-314-00; 43-06-000-308-00
43-06-500-010-00; 43-06-000-303-00

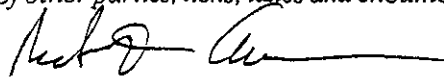
You may wish to retain and remove some, or all, of the improvements included in the acquisition. If so, the following owner-retention values have been established for the improvements listed above in Item 3, and the total of the owner-retention values for the improvements retained will be deducted from the total compensation.

<u>IMPROVEMENT</u>	<u>OWNER-RETENTION VALUE</u>
<u>N/A</u>	<u>\$ N/A</u>
<u>N/A</u>	<u>\$ N/A</u>
<u>N/A</u>	<u>\$ N/A</u>

NOTE: Any agreement to retain such improvements does not convey with it a permit to move the improvements on, or over any State highway. It is suggested that you contact the Illinois Dept. of Transportation district office nearest you for information regarding application for a permit if one is needed.

On behalf of the City of Galena I hereby offer the property owner the total sum of \$ 70,725 determined as the fair market value by an independent appraisal, for the property described on the attached instrument(s), free and clear of all claims of other parties, liens, taxes and encumbrances.

PRESENTED BY: Richard D. Auman, Mayor
(Chief Elected Official)


(Signature)

DATE: 2/14/02

STATEMENT OF OWNER

I have read the preceding summary describing how this appraised value was established and was offered the stated value of \$ _____. I further state that:

There are no persons living on the property.

There are no businesses being conducted on the property by others.

The following persons are living or conducting business on the property (including owner if in occupancy). Give name and address:

Signed _____
Owner or Representative

Address

Please note that the signing of this statement by the owner (or representative) DOES NOT constitute an acceptance of the herein stated offer to purchase.

Waiver of Rights to Just Compensation

RE: Project # BP 00-260

Parcel # 43-06-000-314-00; 43-06-000-308-00
43-06-500-010-00; 43-06-000-303-00

I, _____, have been informed of all my rights and benefits under the
(seller / grantor)
federal "*Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970*", as amended, and/or the Illinois
Displaced Persons Relocation Act and have been provided with a "Statement of Just Compensation" and a written "Offer to
Purchase" on the subject property for the appraised value of \$ _____.
(Amount)

Of my own choice, I have elected to accept an amount less than the specified appraised fair market value for the following
reason(s): _____

(Signature of Seller/Grantor)

(Date)

Ordinance #0-02-15

**An Ordinance Authorizing the Condemnation of Certain Property for the Purpose of
Constructing A Recreation Trail.**

Adopted by the City Council of the City of Galena this 10th day of June 2002.

Published in pamphlet form by authority of the City Council of the City of Galena,
Jo Daviess County, Illinois, this 10th day of June 2002.

STATE OF ILLINOIS)

) City of Galena

COUNTY OF JO DAVIESS)

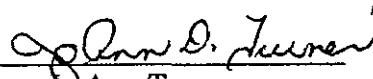
CERTIFICATE

I, Jo Ann Turner, certify that I am the duly elected and acting municipal clerk of the City
of Galena, Jo Daviess County, Illinois.

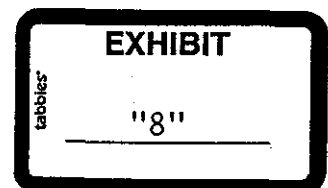
I further certify that on the 10th day of June 2002, the Corporate Authorities of said
municipality passed and approved Ordinance No. 0-02-15 entitled "**Authorizing the
Condemnation of Certain Property for the Purpose of Constructing A Recreation
Trail.**" which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 0-02-15, including the Ordinance and a cover sheet
thereof, was prepared, and a copy of such Ordinance was posted in the municipal
building, commencing the 10th day of June 2002 and commencing for at least ten (10)
days thereafter.

Dated at Galena, Illinois, this 10th day of June 2002.


Jo Ann Turner
City Clerk

(Seal)



ORDINANCE NO. 0-02-15
**AN ORDINANCE AUTHORIZING THE
CONDEMNATION OF CERTAIN PROPERTY
FOR THE PURPOSE OF CONSTRUCTING
A RECREATIONAL TRAIL**

BE IT ORDAINED by the City Council of the City of Galena, Jo Daviess County, Illinois, as follows:

WHEREAS, the City of Galena (hereinafter referred to as "City") is a municipal corporation duly organized and existing under the laws of the State of Illinois and as such may exercise the right of eminent domain by condemnation proceedings in accordance with the Illinois Municipal Code Section 65 ILCS 5/11-61.1; and

WHEREAS, the City has been successful in obtaining an Illinois Department of Natural Resources – Open Space Land Acquisition and Development Grant (OSLAD) for the purpose of acquiring open space for purposes of recreational trails; and

WHEREAS, the City is desirous of constructing said recreational trail to be used as a bike and walking path and to be incorporated into the Grand Illinois Trail System, and to that end needs to acquire certain property; and

WHEREAS, Section 5/11-94-1 authorizes a municipality to condemn property for purposes of providing recreational facilities; and

WHEREAS, the City is in need of certain real estate owned by the Burlington Northern and Santa Fe Railway, for the purpose of acquiring the property for the recreational facility; and

WHEREAS, the City and the Burlington Northern and Santa Fe Railway have been unable to agree upon just compensation for the property which the City needs to acquire; and

WHEREAS, the City has determined that it is necessary to acquire said railroad property by fee title.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GALENA, ILLINOIS, AS FOLLOWS:

SECTION 1: The City is in need of property described on Exhibit "A" fully attached hereto and incorporated herein by this reference.

SECTION 2: The City has been unable to come to an agreement with the Burlington Northern and Santa Fe Railway on just compensation to be paid for the real property.

SECTION 3: The City has determined that it is necessary, convenient and desirable to acquire the subject property by fee title and take possession of the real property described herein for the purpose of constructing a recreational facility to be used as a bicycle and recreation trail as a part of the Grand Illinois Trail System.

SECTION 4: The City of Galena, by and through its municipal authorities, authorize the City Attorney to commence eminent domain proceedings in the Jo Daviess County Circuit Court against Burlington Northern and Santa Fe Railway to acquire the subject real property for the aforesaid purposes.

SECTION 5: Pursuant to statute, the City has requested authorization from the Interstate Commerce Commission to condemn said property. Said condemnation proceedings shall not proceed until authorization is granted for such purposes from the Interstate Commerce Commission.

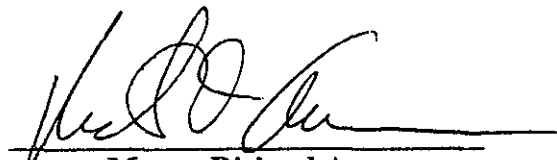
SECTION 6: The City is prepared to pay just compensation to the Burlington Northern and Santa Fe Railway for the property.

SECTION 7: This Ordinance shall be in full force and effect upon its passage and legal publication in pamphlet form.

SECTION 8: Passed on this 10th day of June, 2002 in open Council

AYES: Bookless
Francomb
Greene
O'Keefe
Seban
Auman

NAYS: Rosenthal



Mayor Richard Auman

ATTEST:



City Clerk

EXHIBIT A

All that portion of The Burlington Northern and Santa Fe Railway Company's (formerly Chicago, Burlington & Quincy Railroad Company) Galena Junction to Galena, Illinois Branch Line right of way, now discontinued, varying in width of each side of said Railway Company's Main Track centerline, as originally located and constructed upon over and across Sections 24, 25 and 36, all in Township 28 North, Range 1 West, and in Government Lot 2 of Section 29, Township 28 North, Range 1 East, all of the Fourth Principal Meridian, Jo Daviess County, Illinois, more particularly described as follows, to-wit:

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline, as originally located and constructed upon, over and across the West Half and the North Half Northeast Quarter of said Section 36, and the Southeast Quarter of the Southeast Quarter of said Section 25, bounded on the South by a line drawn parallel with and 350.0 feet normally distant Northerly of the South line of said Section 36, and bounded on the Northeast by the East line of said Section 25, EXCEPTING THEREFROM, that portion lying within 50.0 feet of said Railway Company's Chicago to St. Paul Main Track centerline, as now located and constructed; also,

All that portion of said Railway Company's 150.0 foot wide Branch Line right of way, being 75.0 feet wide on each side of said Main Track centerline, as originally located and constructed upon, over and across the Southwest Quarter of the Southwest Quarter (government Lot 2) of said Section 29, being the same property described in Warranty Deed from Nicholas Riplinger, et ux to the Freeport and Mississippi River Railway Company filed for record November 18, 1908 in Book 54 of Deeds, page 383 in and for said County; also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline, as originally located and constructed upon, over and across the East Half of said Section 25 and the Southeast Quarter of said Section 24, all in Township 28 North, Range 1 West, bounded on the Southeast by the East line of said Section 25, and bounded on the North by the South line of Webster Street in the City of Galena, Illinois; also,

An additional parcel of land situated in the Southeast Quarter of said Section 24, Township 28 North, Range 1 West, being the same property described in Quit Claim Deed from the Chicago & North-Western Railway Company to Chicago, Burlington and Northern Railroad Company filed for record October 17, 1888 in Book 62 of Deeds, page 834 in and for said County, described as follows:

Beginning at the point of intersection of the South line of Webster Street with the Southerly extension of the West boundary of Third Street in the City of Galena; thence Southerly along said Southerly extension of the West boundary of Third Street to the South line of land owned by Ralph L. Morris on the 25th day of August, 1854, dividing the land of said Morris from the land of McCarty; thence Westerly on said dividing line to the Easterly bank of Galena (formerly Fever) River; thence Northerly along said Easterly bank to the South boundary of Webster Street; thence Easterly along said South boundary of Webster Street to the place of beginning,

EXCEPTING THEREFROM, the hereinabove described 100.0 foot wide Branch Line right of way.

All of Lots 1 through 12, inclusive, in Block 1, and Lots 4, 5, 6, 7 and 8 in Block 2, on the East side of the Galena River, in the City of Galena, Jo Daviess County, Illinois.